

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

Date: 06/09/2009

Time: 10:00:00 AM

Dept: C-71

Judicial Officer Presiding: Judge Ronald S. Prager

Clerk: Kathleen Sandoval

Bailiff/Court Attendant: I. Wilks

ERM: Peter Stewart #3184

Case Init. Date: 06/19/1998

Case No: JCCP4041

Case Title: JCCP4041 COORDINATION PROCEEDING
TOBACCO LITIGATION

Case Category: Civil - Unlimited

Case Type: Misc Complaints - Other

Event Type: Motion Hearing (Civil)

Causal Document & Date Filed:

Appearances:

The Court, having taken the above-entitled matter under submission on 06/08/2009 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

RULING AFTER ORAL ARGUMENT: The Court rules on defendant R.J. Reynolds Tobacco Co.'s ("Defendant") motion to determine prevailing party on the State's amended motion to enforce the Consent Decree as follows:

After taking the matter under submission, the Court affirms its tentative ruling.

Although Defendant provided some authority stating that consent decrees can be characterized as contracts (Cal. State Auto. Inter-Ins. Bur. v. Super. Ct. (1990) 50 Cal.3d 658, 663-664), the Court notes that it denied Defendant's request for a jury trial based upon its finding that this action was equitable in nature. Thus, the Court declines to apply Civil Code section 1717 ("section 1717") to this action.

Even if section 1717 were to be applied to this case, the Court would find that plaintiff People of the State of California ("Plaintiff") was the prevailing party in this matter. Plaintiff alleged that the Defendant violated the Consent Decree based on both adjacency of the gatefold to the Rolling Stone editorial content, which included cartoons, and the content of the gatefold itself provided by Defendant. Although this Court determined that there was insufficient evidence to prove violation based on adjacency to the Rolling Stone editorial content, Plaintiff proved Defendant's own gatefold ad violated the cartoon prohibition. Thus, Plaintiff prevailed on a significant issue and, therefore was the prevailing party. (See *Garciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140,153.) Even if the Court were to conclude that which side prevailed is disputable, the Court has the discretion to find no prevailing party. (Hsu v. Abbara (1995) 9 Cal.4th 863, 876.) In this case, the Court would decline to exercise its discretion to find no prevailing party.

IT IS SO ORDERED.